

106TH CONGRESS
2D SESSION

S. 2928

To protect the privacy of consumers who use the Internet.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2000

Mr. MCCAIN (for himself, Mr. KERRY, Mr. ABRAHAM, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the privacy of consumers who use the Internet.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Internet
5 Privacy Enhancement Act”.

6 **SEC. 2. COLLECTION OF PERSONALLY IDENTIFIABLE IN-**
7 **FORMATION.**

8 (a) IN GENERAL.—It is unlawful for a commercial
9 website operator to collect personally identifiable informa-
10 tion online from a user of that website unless the operator
11 provides—

1 (1) notice to the user on the website in accord-
2 ance with the requirements of subsection (b); and

3 (2) an opportunity to that user to limit the use
4 for marketing purposes, or disclosure to third par-
5 ties of personally identifiable information collected
6 that is—

7 (A) not related to provision of the products
8 or services provided by the website; or

9 (B) not required to be disclosed by law.

10 (b) NOTICE.—

11 (1) IN GENERAL.—For purposes of subsection
12 (a), notice consists of a statement that informs a
13 user of a website of the following:

14 (A) The identity of the operator of the
15 website and of any third party the operator
16 knowingly permits to collect personally identifi-
17 able information from users through the
18 website, including the provision of an electronic
19 means of going to a website operated by any
20 such third party.

21 (B) A list of the types of personally identi-
22 fiable information that may be collected online
23 by the operator and the categories of informa-
24 tion the operator may collect in connection with
25 the user's visit to the website.

1 (C) A description of how the operator uses
2 such information, including a statement as to
3 whether the information may be sold, distrib-
4 uted, disclosed, or otherwise made available to
5 third parties for marketing purposes.

6 (D) A description of the categories of po-
7 tential recipients of any such personally identifi-
8 able information.

9 (E) Whether the user is required to pro-
10 vide personally identifiable information in order
11 to use the website and any other consequences
12 of failure to provide that information.

13 (F) A general description of what steps the
14 operator takes to protect the security of person-
15 ally identifiable information collected online by
16 that operator.

17 (G) A description of the means by which a
18 user may elect not to have the user's personally
19 identifiable information used by the operator
20 for marketing purposes or sold, distributed, dis-
21 closed, or otherwise made available to a third
22 party, except for—

23 (i) information related to the provi-
24 sion of the product or service provided by
25 the website; or

1 (ii) information required to be dis-
2 closed by law.

3 (H) The address or telephone number at
4 which the user may contact the website oper-
5 ator about its information practices and also an
6 electronic means of contacting the operator.

7 (2) FORM OF NOTICE.—The notice required by
8 subsection (a) shall be clear, conspicuous, and easily
9 understood.

10 (3) OPPORTUNITY TO LIMIT DISCLOSURE.—The
11 opportunity provided to users to limit use and disclo-
12 sure of personally identifiable information shall be
13 easy to use, easily accessible, and shall be available
14 online.

15 (c) INCONSISTENT STATE LAW.—No State or local
16 government may impose any liability for commercial ac-
17 tivities or actions by a commercial website operator in
18 interstate or foreign commerce in connection with an ac-
19 tivity or action described in this Act that is inconsistent
20 with, or more restrictive than, the treatment of that activ-
21 ity or action under this section.

22 (d) SAFE HARBOR.—A commercial website operator
23 may not be held to have violated any provision of this Act
24 if it complies with self-regulatory guidelines that—

1 (1) are issued by seal programs or representa-
2 tives of the marketing or online industries or by any
3 other person; and

4 (2) are approved by the Commission as con-
5 taining all the requirements set forth in subsection
6 (b).

7 **SEC. 3. ENFORCEMENT.**

8 (a) **IN GENERAL.**—The violation of section 2(a) or
9 (b) shall be treated as a violation of a rule defining an
10 unfair or deceptive act or practice in or affecting com-
11 merce proscribed by section 18(a)(1)(B) of the Federal
12 Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

13 (b) **ENFORCEMENT BY CERTAIN OTHER AGEN-**
14 **CIES.**—Compliance with section 2(a) or (b) shall be en-
15 forced under—

16 (1) section 8 of the Federal Deposit Insurance
17 Act (12 U.S.C. 1818), in the case of—

18 (A) national banks, and Federal branches
19 and Federal agencies of foreign banks, by the
20 Office of the Comptroller of the Currency;

21 (B) member banks of the Federal Reserve
22 System (other than national banks), branches
23 and agencies of foreign banks (other than Fed-
24 eral branches, Federal agencies, and insured
25 State branches of foreign banks), commercial

1 lending companies owned or controlled by for-
2 eign banks, and organizations operating under
3 section 25 or 25(a) of the Federal Reserve Act
4 (12 U.S.C. 601 et seq. and 611 et seq.), by the
5 Board; and

6 (C) banks insured by the Federal Deposit
7 Insurance Corporation (other than members of
8 the Federal Reserve System) and insured State
9 branches of foreign banks, by the Board of Di-
10 rectors of the Federal Deposit Insurance Cor-
11 poration;

12 (2) section 8 of the Federal Deposit Insurance
13 Act (12 U.S.C. 1818), by the Director of the Office
14 of Thrift Supervision, in the case of a savings asso-
15 ciation the deposits of which are insured by the Fed-
16 eral Deposit Insurance Corporation;

17 (3) the Federal Credit Union Act (12 U.S.C.
18 1751 et seq.) by the National Credit Union Adminis-
19 tration Board with respect to any Federal credit
20 union;

21 (4) part A of subtitle VII of title 49, United
22 States Code, by the Secretary of Transportation
23 with respect to any air carrier or foreign air carrier
24 subject to that part;

1 (5) the Packers and Stockyards Act, 1921 (7
2 U.S.C. 181 et seq.) (except as provided in section
3 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
4 retary of Agriculture with respect to any activities
5 subject to that Act; and

6 (6) the Farm Credit Act of 1971 (12 U.S.C.
7 2001 et seq.) by the Farm Credit Administration
8 with respect to any Federal land bank, Federal land
9 bank association, Federal intermediate credit bank,
10 or production credit association.

11 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
12 pose of the exercise by any agency referred to in sub-
13 section (b) of its powers under any Act referred to in that
14 subsection, a violation of section 2(a) or (b) is deemed to
15 be a violation of a requirement imposed under that Act.
16 In addition to its powers under any provision of law spe-
17 cifically referred to in subsection (b), each of the agencies
18 referred to in that subsection may exercise, for the pur-
19 pose of enforcing compliance with any requirement im-
20 posed under section 2(a) or (b), any other authority con-
21 ferred on it by law.

22 (d) ACTIONS BY THE COMMISSION.—The Commis-
23 sion shall prevent any person from violating section 2(a)
24 or (b) in the same manner, by the same means, and with
25 the same jurisdiction, powers, and duties as though all ap-

1 plicable terms and provisions of the Federal Trade Com-
2 mission Act (15 U.S.C. 41 et seq.) were incorporated into
3 and made a part of this Act. Any entity that violates any
4 provision of that title is subject to the penalties and enti-
5 tled to the privileges and immunities provided in the Fed-
6 eral Trade Commission Act in the same manner, by the
7 same means, and with the same jurisdiction, power, and
8 duties as though all applicable terms and provisions of the
9 Federal Trade Commission Act were incorporated into and
10 made a part of that title.

11 (e) RELATIONSHIP TO OTHER LAWS.—

12 (1) COMMISSION AUTHORITY.—Nothing con-
13 tained in this Act shall be construed to limit the au-
14 thority of the Commission under any other provision
15 of law.

16 (2) COMMUNICATIONS ACT.—Nothing in section
17 2(a) or (b) requires an operator of a website to take
18 any action that is inconsistent with the requirements
19 of section 222 or 631 of the Communications Act of
20 1934 (47 U.S.C. 222 or 551, respectively).

21 (3) OTHER ACTS.—Nothing in this Act is in-
22 tended to affect any provision of, or any amendment
23 made by—

24 (A) the Children’s Online Privacy Protec-
25 tion Act of 1998;

1 (B) the Gramm-Leach-Bliley Act; or

2 (C) the Health Insurance Portability and
3 Accountability Act of 1996.

4 (f) CIVIL PENALTY.—In addition to any other pen-
5 alty applicable to a violation of section 2(a), there is here-
6 by imposed a civil penalty of \$22,000 for each such viola-
7 tion. In the event of a continuing violation, each day on
8 which the violation continues shall be considered as a sepa-
9 rate violation for purposes of this subsection. The max-
10 imum penalty under this subsection for a related series
11 of violations is \$500,000. For purposes of this subsection,
12 the violation of an order issued by the Commission under
13 this Act shall not be considered to be a violation of section
14 2(a) of this Act.

15 **SEC. 4. ACTIONS BY STATES.**

16 (a) IN GENERAL.—

17 (1) CIVIL ACTIONS.—In any case in which the
18 attorney general of a State has reason to believe
19 that an interest of the residents of that State has
20 been or is threatened or adversely affected by the
21 engagement of any person in a practice that violates
22 section 2(a) or (b), the State, as *parens patriae*, may
23 bring a civil action on behalf of the residents of the
24 State in a district court of the United States of ap-
25 propriate jurisdiction to—

1 (A) enjoin that practice;

2 (B) obtain damage, restitution, or other
3 compensation on behalf of residents of the
4 State; or

5 (C) obtain such other relief as the court
6 may consider to be appropriate.

7 (2) NOTICE.—

8 (A) IN GENERAL.—Before filing an action
9 under paragraph (1), the attorney general of
10 the State involved shall provide to the
11 Commission—

12 (i) written notice of that action; and

13 (ii) a copy of the complaint for that
14 action.

15 (B) EXEMPTION.—

16 (i) IN GENERAL.—Subparagraph (A)
17 shall not apply with respect to the filing of
18 an action by an attorney general of a State
19 under this subsection, if the attorney gen-
20 eral determines that it is not feasible to
21 provide the notice described in that sub-
22 paragraph before the filing of the action.

23 (ii) NOTIFICATION.—In an action de-
24 scribed in clause (i), the attorney general
25 of a State shall provide notice and a copy

1 of the complaint to the Commission at the
2 same time as the attorney general files the
3 action.

4 (b) INTERVENTION.—

5 (1) IN GENERAL.—On receiving notice under
6 subsection (a)(2), the Commission shall have the
7 right to intervene in the action that is the subject
8 of the notice.

9 (2) EFFECT OF INTERVENTION.—If the Com-
10 mission intervenes in an action under subsection (a),
11 it shall have the right—

12 (A) to be heard with respect to any matter
13 that arises in that action; and

14 (B) to file a petition for appeal.

15 (3) AMICUS CURIAE.—Upon application to the
16 court, a person whose self-regulatory guidelines have
17 been approved by the Commission and are relied
18 upon as a defense by any defendant to a proceeding
19 under this section may file amicus curiae in that
20 proceeding.

21 (c) CONSTRUCTION.—For purposes of bringing any
22 civil action under subsection (a), nothing in this Act shall
23 be construed to prevent an attorney general of a State
24 from exercising the powers conferred on the attorney gen-
25 eral by the laws of that State to—

- 1 (1) conduct investigations;
- 2 (2) administer oaths or affirmations; or
- 3 (3) compel the attendance of witnesses or the
- 4 production of documentary and other evidence.

5 (d) ACTIONS BY THE COMMISSION.—In any case in
6 which an action is instituted by or on behalf of the Com-
7 mission for violation of section 2(a) or (b) no State may,
8 during the pendency of that action, institute an action
9 under subsection (a) against any defendant named in the
10 complaint in that action for violation of that rule.

11 (e) VENUE; SERVICE OF PROCESS.—

12 (1) VENUE.—Any action brought under sub-
13 section (a) may be brought in the district court of
14 the United States that meets applicable require-
15 ments relating to venue under section 1391 of title
16 28, United States Code.

17 (2) SERVICE OF PROCESS.—In an action
18 brought under subsection (a), process may be served
19 in any district in which the defendant—

20 (A) is an inhabitant; or

21 (B) may be found.

22 **SEC. 5. STUDY OF ONLINE PRIVACY.**

23 (a) IN GENERAL.—Within 90 days after the date of
24 enactment of this Act, the Commission shall execute a con-
25 tract with the National Research Council of the National

1 Academy of Sciences for a study of privacy that will exam-
2 ine causes for concern about privacy in the information
3 age and tools and strategies for responding to those con-
4 cerns.

5 (b) SCOPE.—The study required by subsection (a)
6 shall—

7 (1) survey the risks to, and benefits associated
8 with the use of, personal information associated with
9 information technology, including actual and poten-
10 tial issues related to trends in technology;

11 (2) examine the costs and benefits involved in
12 the collection and use of personal information;

13 (3) examine the differences, if any, between the
14 collection and use of personal information by the on-
15 line industry and the collection and use of personal
16 information by other businesses;

17 (4) examine the costs, risks, and benefits of
18 providing consumer access to information collected
19 online, and examine approaches to providing such
20 access;

21 (5) examine the security of personal informa-
22 tion collected online;

23 (6) examine such other matters relating to the
24 collection, use, and protection of personal informa-

1 tion online as the Council and the Commission con-
2 sider appropriate; and

3 (7) examine efforts being made by industry to
4 provide notice, choice, access, and security.

5 (c) RECOMMENDATIONS.—Within 12 months after
6 the Commission’s request under subsection (a), the Coun-
7 cil shall complete the study and submit a report to the
8 Congress, including recommendations for private and pub-
9 lic sector actions including self-regulation, laws, regula-
10 tions, or special agreements.

11 (d) AGENCY COOPERATION.—The head of each Fed-
12 eral department or agency shall, at the request of the
13 Commission or the Council, cooperate as fully as possible
14 with the Council in its activities in carrying out the study.

15 (e) FUNDING.—The Commission is authorized to be
16 obligate not more than \$1,000,000 to carry out this sec-
17 tion from funds appropriated to the Commission.

18 **SEC. 6. DEFINITIONS.**

19 In this Act:

20 (1) COMMISSION.—The term “Commission”
21 means the Federal Trade Commission.

22 (2) COMMERCIAL WEBSITE OPERATOR.—The
23 term “operator of a commercial website”—

24 (A) means any person who operates a
25 website located on the Internet or an online

1 service and who collects or maintains personal
2 information from or about the users of or visi-
3 tors to such website or online service, or on
4 whose behalf such information is collected or
5 maintained, where such website or online serv-
6 ice is operated for commercial purposes, includ-
7 ing any person offering products or services for
8 sale through that website or online service, in-
9 volving commerce—

10 (i) among the several States or with 1
11 or more foreign nations;

12 (ii) in any territory of the United
13 States or in the District of Columbia, or
14 between any such territory and—

15 (I) another such territory; or

16 (II) any State or foreign nation;

17 or

18 (iii) between the District of Columbia
19 and any State, territory, or foreign nation;

20 but

21 (B) does not include any nonprofit entity
22 that would otherwise be exempt from coverage
23 under section 5 of the Federal Trade Commis-
24 sion Act (15 U.S.C. 45).

1 (3) COLLECT.—The term “collect” means the
2 gathering of personally identifiable information
3 about a user of an Internet service, online service,
4 or commercial website by or on behalf of the pro-
5 vider or operator of that service or website by any
6 means, direct or indirect, active or passive,
7 including—

8 (A) an online request for such information
9 by the provider or operator, regardless of how
10 the information is transmitted to the provider
11 or operator;

12 (B) the use of an online service to gather
13 the information; or

14 (C) tracking or use of any identifying code
15 linked to a user of such a service or website, in-
16 cluding the use of cookies.

17 (4) INTERNET.—The term “Internet” means
18 collectively the myriad of computer and tele-
19 communications facilities, including equipment and
20 operating software, which comprise the inter-
21 connected world-wide network of networks that em-
22 ploy the Transmission Control Protocol/Internet
23 Protocol, or any predecessor or successor protocols
24 to such protocol, to communicate information of all
25 kinds by wire or radio.

1 (5) PERSONALLY IDENTIFIABLE INFORMA-
2 TION.—The term “personally identifiable informa-
3 tion” means individually identifiable information
4 about an individual collected online, including—

5 (A) a first and last name, whether given at
6 birth or adoption, assumed, or legally changed;

7 (B) a home or other physical address in-
8 cluding street name and name of a city or town;

9 (C) an e-mail address;

10 (D) a telephone number;

11 (E) a Social Security number; or

12 (F) unique identifying information that an
13 Internet service provider or operator of a com-
14 mercial website collects and combines with any
15 information described in the preceding subpara-
16 graphs of this paragraph.

17 (6) ONLINE.—The term “online” refers to any
18 activity regulated by this Act or by section 2710 of
19 title 18, United States Code, that is effected by ac-
20 tive or passive use of an Internet connection, regard-
21 less of the medium by or through which that connec-
22 tion is established.

1 (7) THIRD PARTY.—The term “third party”,
2 when used in reference to a commercial website op-
3 erator, means any person other than the operator.

○